

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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FERNANDO HERNANDEZ, KENNETH CHOW,  
BRIAN WHITE, DAVID WILLIAMS,  
MARQUIS ACKLIN, CECILIA JACKSON,  
TERESA JACKSON, MICHAEL LATTIMORE  
and JUANY GUZMAN, Each Individually, And On Behalf Of  
All Other Persons Similarly Situated,

*Plaintiffs,*

-against-

THE FRESH DIET INC.,  
SYED HUSSAIN, Individually,  
JUDAH SCHLOSS, Individually,  
and ZAIMI DUCHMAN, Individually

*Defendants.*  
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12 CV 4339 (ALC)(JLC)

**AFFIDAVIT OF  
PLAINTIFF FERNANDO  
HERNANDEZ IN  
SUPPORT OF  
PRELIMINARY OR  
CONDITIONAL  
COLLECTIVE ACTION  
CERTIFICATION**

FERNANDO HERNANDEZ, being duly sworn, and subject to the penalties for perjury,  
deposes and says:

1. I was employed as driver/food delivery employee for the Defendants from approximately to approximately April 2010 to approximately May or June of 2012.
2. My job responsibilities as a driver/food delivery employee consisted exclusively of showing up to the Fresh Diet Inc.'s Brooklyn facilities, receiving instructions as to my delivery route(s), obtaining prepared meals, and personally delivering them to the Fresh Diet's customers throughout the New York City tri-state region, including locations in New York, New Jersey and Connecticut. After completing my meal deliveries, I would have to return to the Fresh Diet's Brooklyn facilities to report back, complete required paperwork and return empty bags.
3. Throughout my employment, my work was performed under the supervision, direction and control of Mr. Syed Hussain, who was the Logistics Manager for, or on behalf of,

the Fresh Diet, at the company's Brooklyn facility.

4. The Fresh Diet's Brooklyn facility included a kitchen or food preparation area used by the kitchen staff, and a pick-up and return area used by the drivers and food delivery employees. As a driver, I was not a part of the food preparation or kitchen staff.

5. I did not concern myself with the formal corporate organization of the Fresh Diet. I understand that there may have been various closely related or commonly owned companies involved in the Fresh Diet's business operations at the Brooklyn facility. However, as a driver and food delivery employee, these corporate structures were not my concern. Delivering meals prepared at the Brooklyn facility, and following Mr. Hussain's instructions regarding how to deliver these meals, and to whom, were my only concerns.

6. At all relevant times, I regarded Mr. Hussain to be my direct supervisor and could not question his authority.

7. My job responsibilities did not require any specific educational requirements or skills (other than a driver's license), nor any independent judgment. I always had to do what Syed Hussain or persons directly under his supervision directed me to do. Indeed, I believed that I would have been reprimanded and possibly disciplined or terminated if I did not follow their instructions.

8. I did not have the authority to hire, fire or discipline other employees, nor was I responsible for making hiring and firing recommendations.

9. During my employment with the Defendants, I never considered myself to be a manager or supervisor and was never referred to as a manager or supervisor. Indeed, I did not supervise any other employees nor did I have any say in how their work was to be performed.

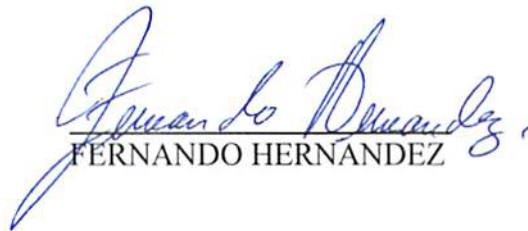
10. My work as a driver/food delivery employee for the Defendants was performed in the normal course of the Defendants' day-to-day business operations. The Defendants were

engaged in a food preparation and distribution business. Customers paid to have prepared meals delivered to their homes or other locations by drivers such as myself.

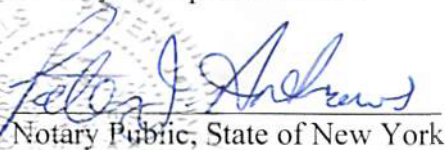
11. Throughout my employment, I often worked significantly in excess of forty (40) hours a week, yet was never paid overtime compensation of one and a half times my regular hourly rate of pay.

12. In addition to myself, I am aware and have personal knowledge that the Defendants employed many other similarly situated drivers and/or food delivery employees and routinely failed to pay them overtime compensation of one and a half times their regular hours rates for those hours in excess of forty (40) hours a week.

13. I have previously sworn to another affidavit in this case, on July 9, 2012. In addition to the statements set out above in this affidavit, I reaffirm the statements set out in my July 9, 2012 affidavit.

  
FERNANDO HERNANDEZ

Sworn to before me this  
24<sup>th</sup> day of September 2012

  
Notary Public, State of New York

